

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 17 July 2003

CASE NO.: 2003-STA-00016

In the Matter of

**ASSISTANT SECRETARY OF LABOR for
OCCUPATIONAL SAFETY AND HEALTH**

Prosecuting Party
and

JAMES KISTNER
Complainant

v.

ROADWAY EXPRESS, INC.
Respondent

**DECISION AND ORDER APPROVING SETTLEMENT
AGREEMENT AND DISMISSING COMPLAINT**

This proceeding arises under Section 31105 of the Surface Transportation Assistance Act (STAA) of 1982 (49 U.S.C. § 31101) and the regulations promulgated thereunder [29 C.F.R. Part 1978 (1989)]. The parties, on July 16, 2003, by facsimile transmission filed a Settlement Agreement in accordance with 29 C.F.R. § 1978.111(d)(2). The Agreement resolves the controversy arising from the complaint of James Kistner under the statute.

The Act and implementing regulations provide that a proceeding under the Act may be ended prior to entry of a final order by a settlement agreement between the parties. 49 U.S.C. §31105(b)(2)(C); 29 C.F.R. §1978.111(d)(2). The Administrative Law Judge's role in reviewing the parties's settlement agreement is limited to ascertaining whether the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that the Respondent violated the Act. *Ass't Sec'y & Zurenda v. Corporate Express Delivery Systems, Inc.*, ARB No. 00-041, OALJ No. 1999-STA-30 (ARB March 31, 2000) (*Zurenda*); *Champlin v. Florilli Corp.*, OALJ No. 1991-STA-7 (Sec'y May 20, 1992).

I find the overall settlement terms to be reasonable but some clarification is necessary. The

Agreement notes at Paragraph Fourteen that it is governed by and interpreted in accordance with the laws of the state of Ohio. That provision is interpreted as not limiting the authority of the Secretary or any U.S. District Court to seek or grant appropriate relief under any applicable federal whistleblower statute or regulation. Phillips v. Citizens Assoc. for Sound Energy, Case No. 91-ERA-25, Sec. Final Order of Dismissal (Nov. 4, 1991).

Pursuant to the requirements of the Act and the implementing regulations, I have carefully reviewed the terms of the parties' Settlement Agreement, and I have determined that it constitutes a fair, adequate and reasonable settlement of the complaint.

Accordingly, **IT IS HEREBY ORDERED** that:

- (1) the parties' Settlement Agreement is hereby approved; and
- (2) the above-captioned complaint is hereby dismissed with prejudice.

This approval of the Settlement Agreement and dismissal of the complaint constitutes the final order in this matter. *Pettit v. Des Moines Asphalt & Paving Co.*, OALJ No. 1996-STA-3 (ARB December 30, 1996).

A

Colleen A. Geraghty
Administrative Law Judge

Boston, Massachusetts
CAG:dmd